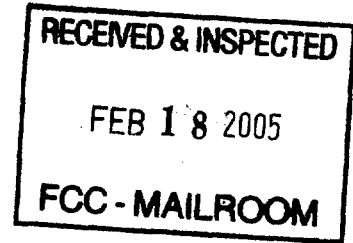


ORIGINAL

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554



In re Amendment of Section 73.202(b))
of the Commission's Rules, Table of Allotments,)
FM Broadcast Stations)

(CROSS PLAINS ET AL., TEXAS)

) MB Docket No. 04-348,
) RM-10718, RM-111543,
) RM-11154

(BERTRAM, TEXAS)

DOCKET FILE COPY ORIGINAL

) MB Docket No. 04-407
) RM-11106

To: The Office of the Secretary,
for the Attention of the Assistant Chief, Audio Division, Media Bureau

REPLY COMMENTS TO COUNTERPROPOSALS

Munbilla Broadcasting Properties, Ltd. (MPBL), by its communications counsel, hereby
files its Reply Comments in this proceeding.

I. BACKGROUND

1. Charles Crawford filed a Petition for Rule Making asking the Commission to allot Channel 294A to Cross Plains, Texas as a first local service. This prompted the Media Bureau to open this docket and to issue a Notice of Proposed Rule Making, 19 FCC Rcd 17452, 69 Fed. Reg. 55547 (2004) (the NPRM). As required by the NPRM, Mr. Crawford filed Comments restating his interest in applying for a Channel-294A allotment to Cross Plains, Texas.

2. On October 25, 2004, MBPL lodged a timely Counterproposal in this proceeding. By means of its Public Notice, Report No. 2692 (released February 3, 2005) (the Counterproposal Public Notice), the Commission announced that its had accepted MBPL's Counterproposal for

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rule making, and that the Commission had assigned to MBPL's Counterproposal the reference number RM-11153.

3. MBPL's Counterproposal comprises the following elements:

- a. MBPL seeks the allotment of Channel 293A to the community of Granite Shoals, Texas as a first local service;
- b. to accommodate the allotment of Channel 293A to Granite Shoals, MBPL seeks the substitution of Channel 284C3 for vacant Channel 293C3 at Llano, Texas;
- c. to accommodate the substitution at Llano, MBPL seeks the substitution of Channel 252A for vacant Channel 284A at Junction, Texas;
- d. to further accommodate the substitution at Llano, MBPL seeks the substitution of Channel 295A for vacant Channel 284A at Blanket, Texas; and
- e. MBPL seeks the reallocation of Channel 295A from Burnet, Texas, to Kempner, Texas as a first local service, and a concomitant modification of MBPL's license for radio station KHLB(FM), FCC Facility ID No. 34948.

4. MBPL's Counterproposal conflicts with the NPRM. The channel substitution at Blanket, necessary for station KHLB to relicense to Kempner, which in turn is necessary to the allotment of Channel 293A to Granite Shoals, directly conflicts with the NPRM's contemplated allotment of Channel 294A to Cross Plains.

5. Schematically, MBPL's Counterproposal is as follows:

COMMUNITY	PRESENT	PROPOSED
Blanket, Texas	284A	295A
Burnet, Texas	223A, 240A*, 295A	223A, 240A*
Granite Shoals, Texas	---	293A
Kempner, Texas	---	295A
Llano, Texas	242A, 275A, 293C3	242A, 275A, 284C3

6. As MBPL's Counterproposal indicated, one element of MBPL's Counterproposal (the substitution at Llano) also conflicted with other allotments requested by Charles Crawford:

- his July 16, 2004, Petition to allot Channel 285A to Cherokee, Texas; and
- his January 15, 2004 Petition to allot Channel 284A to Bertram, Texas.

7. On November 5, 2004, the FCC issued a Notice of Proposed Rule Making in MB Docket No. 04-407, 19 FCC Rcd 22010, 69 Fed. Reg. 67882 (the Bertram NPRM), proposing to allot Channel 284A to Bertram. Apparently, no one filed a Counterproposal by the applicable deadline (December 27). MBPL, however, did file timely Comments pointing out the interrelationship between the Cherokee and Bertram proceedings and asserting that, if anything, Mr. Crawford's Cherokee and Bertram proposals had to be considered as Counterproposals in this, the Cross Plains proceeding. The Counterproposal Public Notice accepted Mr. Crawford's Cherokee proposal as a Counterproposal in this proceeding, according it the reference number RM-11154. The Counterproposal Public Notice also consolidated the Bertram proceeding with this (the Cross Plains) proceeding.

8. Both MBPL's Counterproposal in this (the Cross Plains) proceeding and MBPL's Bertram Comments pointed out that MBPL's proposed Channel 293A at Granite Shoals short-spaced yet another undocketed Crawford Petition -- a November 12, 2003 request for Channel 293A at Sunrise Beach Village, Texas. MBPL's filings also pointed out a fatal defect in that proposal — a short spacing to Channel 293C3 at Llano. MBPL urged that it be dismissed. That has not yet happened, but the Counterproposal Public Notice did *not* include Mr. Crawford's Sunrise Beach Village proposal as an acceptable Counterproposal in this proceeding.

II. ARGUMENT

A. SUNRISE BEACH VILLAGE MUST BE DISMISSED

9. As noted above, the Counterproposal Public Notice did not include Sunrise Beach Village as an acceptable Counterproposal in this proceeding. This is not surprising: the proposal is grossly short-spaced to vacant Channel 293C3 at Llano. The controlling precedent is abundantly clear. To be acceptable for rule making, a Counterproposal must be complete and technically correct as of the filing deadline for Comments in the relevant proceeding.

It is well established that counterproposals must be technically correct and substantially complete when filed and that counterproposals will be considered only if they are filed by the deadline date for comments. See Section 1.420 (d) of the Commission's Rules, Broken Arrow and Bixby, Oklahoma, 3 FCC Rcd 6507, 6511 (1988) and Springdale Arkansas et al., 4 FCC Rcd 674 (1989), recon., 5 FCC Rcd 1241 (1990).

Parker, Arizona, 17 FCC Rcd 9578, 67 Fed. Reg. 39864 (Audio Division, 2002). Thus, the Sunrise Beach Village proposal has no role whatsoever in this proceeding, is not worthy of further discussion, and the staff must summarily reject it.

B. CHEROKEE DOES NOT WARRANT A LOCAL SERVICE

10. In its Counterproposal, MBPL pointed out that Cherokee is neither a Census Designated Place nor incorporated, that it has no recognized boundaries, and that Cherokee is a quiet village. Mr. Crawford took strong umbrage. On the issue of boundaries, Mr. Crawford twice asserted that Cherokee has defined boundaries and twice proffered "proof" of that proposition. Mr. Crawford first made this claim at pp.1-2 of his November 8 Reply Comments:

Munbilla contends that Cherokee, Texas does not qualify as a community for FM allotment purposes. I disagree. Cherokee is a community that has the characteristics that

the Commission equates with community status for allotment purposes and is deserving of an FM allotment. [...] The city boundaries for Cherokee were provided by the County of San Saba Administrative Assistant. [Footnote: County of San Saba, County Courthouse, 500 Eat Wallace, San Sabam Texas 76877, Tele[phone]: (325) 372-3635, Email: adminasst@sansabacounty.org."] (See, Exhibit A.)¹

Mr. Crawford repeated this assertion four days later, in his "Response of Charles Crawford to Reply Comments of '[MBPL].'" Therein, Mr. Crawford accused MBPL of providing, "...sketchy, self[-]serving information regarding Cherokee's qualifications as a community for FM allotment purposes." *Id.* at 4. At p.5, Mr. Crawford asserted:

Cherokee does have definable boundaries, provided by the San Saba County Administrative Assistant. (See, Attachment B.)²

11. Exhibit A to Mr. Crawford's November 8 Reply Comments comprises:

- a fax cover sheet from the office of the County of San Saba dated 2:00 PM, November 4, 2004; and
- two pages on which maps appear.

On each map, a square boundary comprising dashed lines appear. The fax cover sheet, however, indicates that the November 4 fax totalled *only two pages, including the cover sheet*.

12. The cover sheet bears a fax header with a date and time stamp of November 4, 2004, 3:06 PM, an "HP Laserjet 3200" machine-identification stamp,³ and a page stamp of "p.1." The

¹Exhibit A to Mr. Crawford's November 8 Reply Comments also form Exhibit A to MBPL's instant Reply Comments.

²Attachment B to Mr. Crawford's November 12 Response is identical to Exhibit A to his November 8 Reply Comments, apparently except for the fact that fax-machine headers that appear on pages one and two of Exhibit A to the November 8 Reply Comments do not appear on pages one and two of Attachment B to the November 12 response.

³The hp Laserjet 3200 is a multifunction unit manufactured by Hewlett Packard. It performs as a laser printer, a telecopier, a photocopier, and a scanner. See, e.g., <<http://h10010.www1.hp.com/wwpc/uk/en/sm/WF10a/5043-5527-5531-5531-5543-5555.html>>.

telephone number of the receiving fax machine and the recipient's identity have been redacted.

There is one-hour-and-six-minute discrepancy between the fax cover sheet's handwritten transmission-time entry of 2:00 P.M. and the fax header's (receiving) time stamp of 3:06 P.M.

13. The second page of Exhibit A is a map bearing an identical fax header, but for a page stamp of "p.2." This "p.2" map shows a square boundary around Cherokee comprising dashed lines. The third page of Exhibit A is another map of Cherokee with purported square boundaries comprising dashed lines. It appears that this map was computer-generated using a 2000 Delorme Street Atlas CD. This map *does not* have a fax header. However, it contains a date/time stamp of November 4, 2004/14:24, the latter being 2:24 PM expressed in a 24-hour time format. 2:24 PM is 24 minutes *later than* the handwritten time entry on the fax cover page, and 42 minutes *earlier than* the time/date stamps in the fax headers on the fax cover sheet and the "p.2" map.

14. It is obvious from:

- the page count on the fax cover sheet;
- the lack of a fax header on the Delorme map; and
- the discrepancies among the computer-generated time stamp on the Delorme map, the time stamps in the fax headers of the two preceding pages, and the handwritten time entry on the fax cover sheet,

that this Delorme map was *not* part of the fax sent by the County of San Saba's Administrative Assistant to the unknown recipient (whose identity Mr. Crawford has deliberately concealed).

15. The undersigned counsel has communicated with the Office of San Saba County via email. County Attorney David M. Williams has informed me that:

- the fax sent from the County Office on November 4 comprised *two* pages — the fax cover sheet and the "p.2" map;

- the fax *did not* include the Delorme map;
- the “p.2” map is a copy a portion of a “Texas Trails” map of San Saba County;
- the “p.2” map as faxed included a preprinted box by which the cartographer attempted to indicate the general area of Cherokee;
- the preprinted box *does not* depict the legal boundaries of Cherokee;
- in fact, Cherokee has *no* legal boundaries;
- “[t]he indication on the DeLorme map that there are ‘City Boundaries’ of Cherokee, Texas is clearly erroneous,” and
- the fax was sent to a Dallas, Texas telephone number, (214) 522-7406.

See Exhibit B. The fax number (214) 522-7406 is Mr. Crawford’s. See Exhibit C, pages of a document filed with the FCC as an exhibit to FCC Form 314, File No. BALH-20010510AAJ.

16. Mr. Crawford’s statement that Cherokee has defined boundaries is clearly incorrect. Moreover, it is evident that Mr. Crawford generated and tried — *not once, but twice* — to pass off the Delorme map as part of the material that the County of San Saba had supplied to him. Those were *false* descriptions and raise serious questions as to whether Mr. Crawford has misrepresented relevant facts to the Commission, or at the very least, has lacked candor with the Commission. Referral to the Enforcement Bureau for a full investigation is wholly appropriate.

17. It is also abundantly clear from Mr. Williams’s statements that Cherokee is not the community that it may once have been. Previously, Cherokee supported a local newspaper, financial institutions, and the Behrens Normal & Business College. Those no longer exist. It is also clear from Mr. Williams’s statements that the Cherokee Independent School District is *not* an indicia of Cherokee’s status as a licensable community. “[T]he boundaries of the Cherokee Independent School District are defined for taxing purposes, [and] include a large portion

of central and southern San Saba County.” It is also abundantly clear from Mr. Williams’s statements — and from the materials that Mr. Crawford himself has supplied — that many of the businesses and other facilities that Mr. Crawford claims are in Cherokee are in fact elsewhere. Mr. Crawford has failed to show the tiny crossroads called Cherokee is a licensable community.

C. MBPL’S COUNTERPROPOSAL MUST PREVAIL

18. Moreover, even if the staff were to conclude that Cherokee is a licensable community, Mr. Crawford’s three allotment proposals (Cross Plains, Bertram, and Cherokee) cannot prevail over MBPL’s Counterproposal. MBPL’s Counterproposal will provide Granite Shoals, Texas, an incorporated community with a 2000 Census population of 2,040, and Kempner, an incorporated city with a 2000 U.S. Census population of 1,004 persons, each with a first local service.

19. On the other side of the equation, Mr. Crawford’s Cross Plains proposal would entail first local service to a community with a 2000 Census population of only 1,068 persons. Mr. Crawford’s Bertram Counterproposal would provide first local service to a community that has a 2000 Census population of only 1,122 persons. Mr. Crawford’s Cherokee Counterproposal would entail first local service to a crossroads that is neither incorporated nor a CDP, and which has a reported population of only 175 persons. In tabular form, the analysis is as follows.

MUNBILLA COUNTERPROPOSAL		CHARLES CRAWFORD PROPOSALS	
COMMUNITY	POPULATION	COMMUNITY	POPULATION
Granite Shoals	2,040	Cross Plains	1,068
Kempner	1,004	Betram	1,122
		Cherokee	175
TOTAL	3,044	TOTAL	2,365

20. Because MBPL's Counterproposal promises first local service to the community with the largest population in this proceeding, Granite Shoals, it must prevail over Mr. Crawford's proposals. See, e.g., Brightwood et al. Oregon, DA 01-12484, 66 Fed. Reg. 56486 (2001), Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1982). Moreover, MBPL's counterproposal must prevail for the addition reason that MBPL's Counterproposal provides first local services to an aggregate population that is 29% larger than the aggregate population of the three communities that Mr. Crawford champions. Cf. Coon Valley, Wisconsin et al., 15 FCC Rcd 10069, 65 Fed. Reg. 20790 (2000). MBPL's Counterproposal is clearly favored under § 307(b), and must prevail here.

21. MBPL once again restates its intent to apply for a construction permit for Channel 293A at Granite Shoals, if allotted. MBPL further restates its intent, should MBPL be awarded the construction permit, to build the authorized facilities, to place the constructed facilities into broadcast service, and to seek a license to cover those facilities.

22. MBPL again restates its intent to apply for a construction permit for Channel 295A at Kempner, if allotted. MBPL further restates its intent, should MBPL be awarded the construction permit to so modify the licensed facilities of station KHLB(FM), to build the

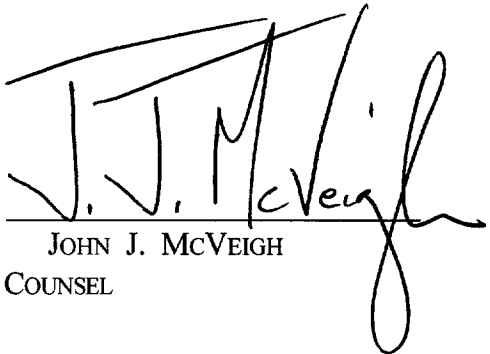
authorized facilities, to place the constructed facilities into broadcast service, and to seek a license to cover those facilities.

CONCLUSION

23. For all of the above reasons, the staff should promptly issue a Report and Order implementing MBPL's Counterproposal, rejecting Mr. Crawford's proposals, and terminating this proceeding.

Respectfully submitted,

MUNBILLA BROADCASTING PROPERTIES, LTD.

BY 
JOHN J. McVEIGH
ITS COUNSEL

JOHN J. McVEIGH, ATTORNEY AT LAW
12101 BLUE PAPER TRAIL
COLUMBIA, MARYLAND 21044-2787

TELEPHONE: 301.596.1655
TELECOPIER: 301.596.1656

DATE: FEBRUARY 17, 2005

EXHIBIT A

Exhibit A

(City boundaries for Cherokee, Texas)

BYRON THEODOSIS
COUNTY JUDGE

KIM WELLS
DISTRICT AND COUNTY CLERK

ROGER CROCKETT
COMMISSIONER PRECINCT 1

RICKEY LUBY
COMMISSIONER PRECINCT 2

WAYLAND PERRY
COMMISSIONER PRECINCT 3

ROGER McGEHEE
COMMISSIONER PRECINCT 4

JOHN L. WELLS
SHERIFF, TAX ASSESSOR-COLLECTOR

DAVID M. WILLIAMS
COUNTY ATTORNEY



COUNTY OF SAN SABA
SAN SABA, TEXAS 76877

GAYLA HAWKINS
COUNTY TREASURER

NEAL ALEXANDER
COUNTY AGENT

CAROLYN McDOWELL
FAMILY & CONSUMER SCIENCE

LESLIE DAWSON
JUSTICE OF THE PEACE

GUILFORD L. JONES III
DISTRICT JUDGE

SAM OATMAN
DISTRICT ATTORNEY

FRED HARDY
VETERANS SERVICE OFFICER

FAX COVER SHEET

DATE: 11-4-04

TIME: 2:00 P.M.

SENT BY: Sup - County Admin. Asst.

No. of pages including cover sheet: 2

TRANSMITTING TO: _____

ATTENTION: _____ FAX NO.: _____

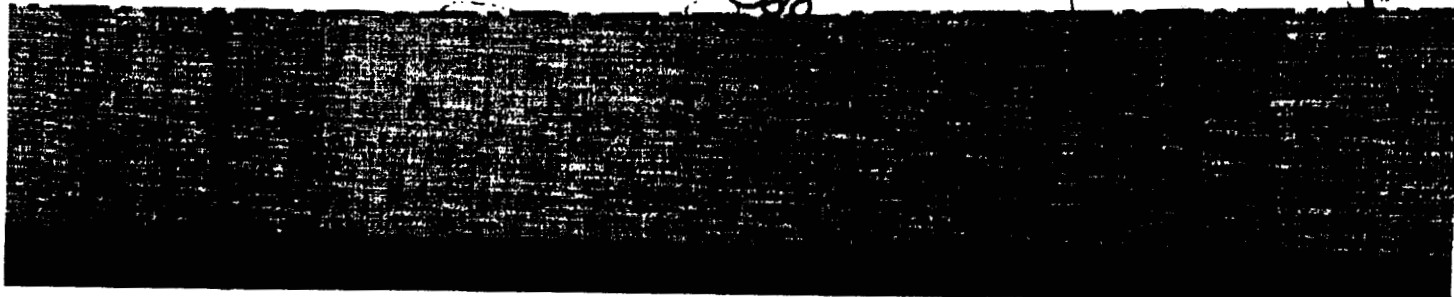
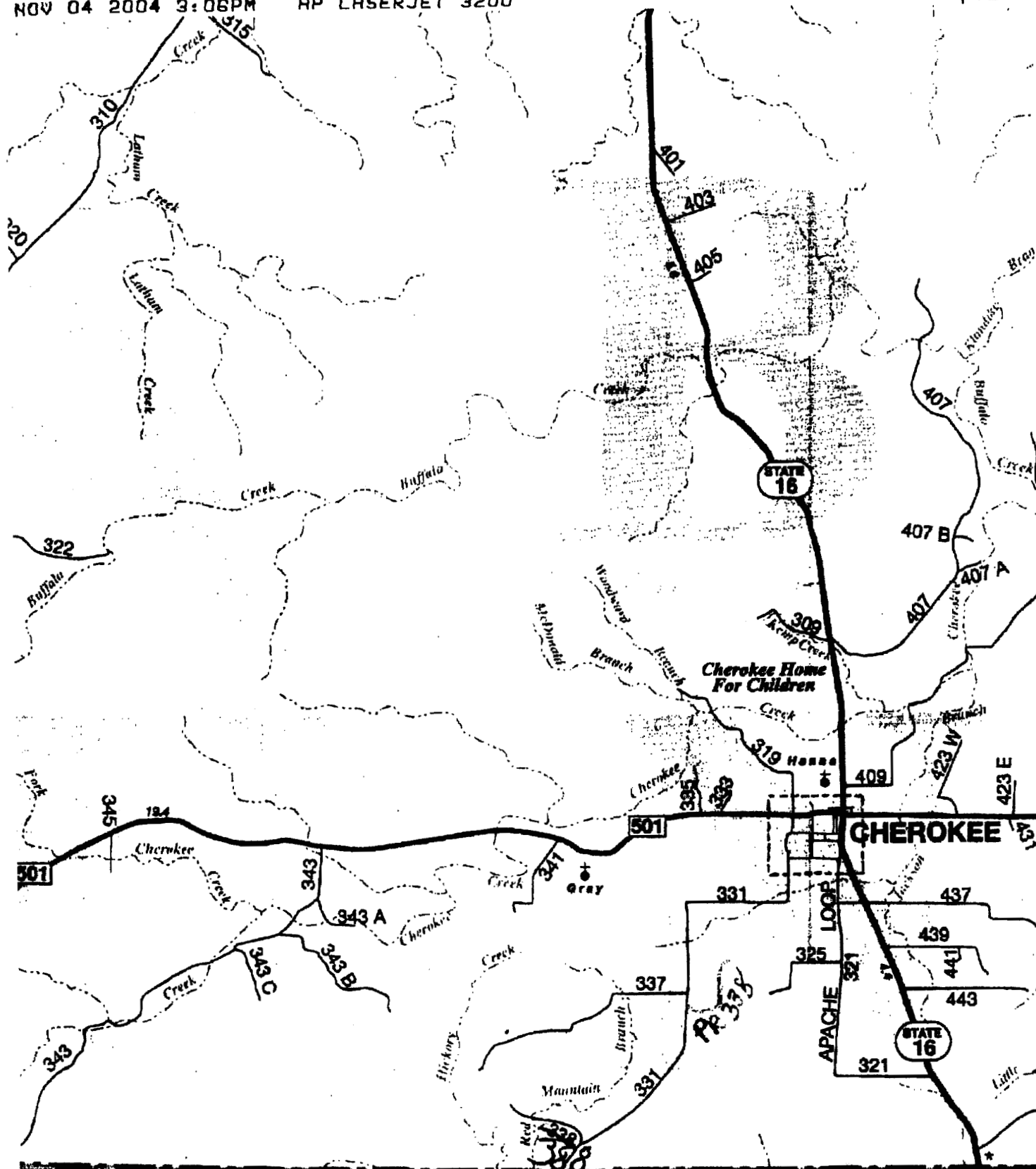
COMMENTS: _____

THIS FAX IS PRIORITY CORRESPONDENCE - PLEASE NOTIFY INTENDED RECIPIENT IMMEDIATELY.

TELEPHONE: 325-372-3635
FAX: 325-372-4484

EMAIL ADDRESS:
adminasst@sansabacounty.org
judge@sansabacounty.org

COUNTY COURTHOUSE
500 EAST WALLACE



Cherokee, TX City Boundaries

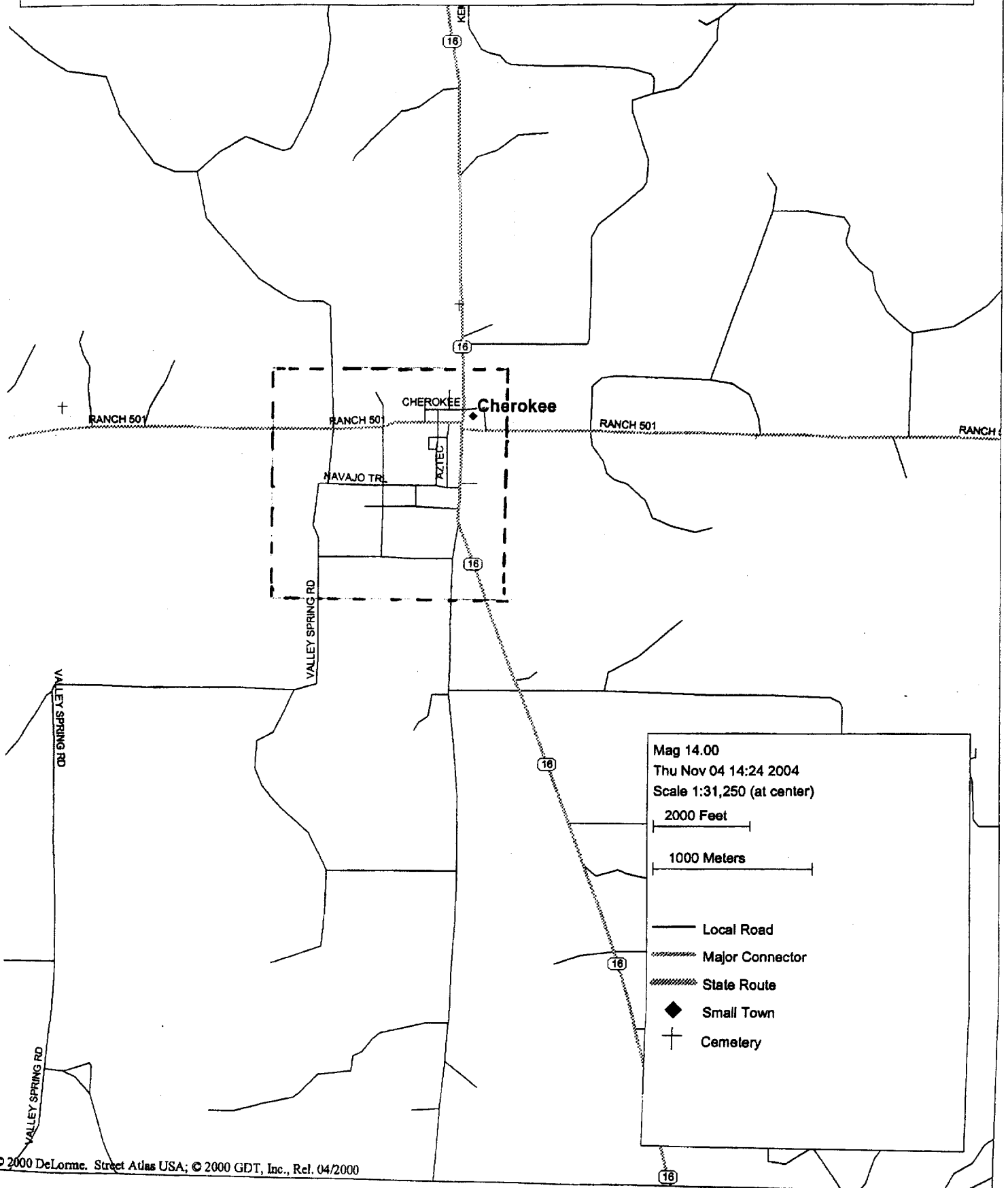


EXHIBIT B

From: "County Attorney" <attorney@sansabacounty.org>
To: <kd4vs@comcast.net>
Cc: <adminasst@sansabacounty.org>
Subject: FCC proceeding
Date: Thu, 17 Feb 2005 10:07:47 -0600

Dear Mr. McVeigh:

Sue Timmons, the administrative assistant to County Judge Byron Theodosis, has referred your correspondence to me for disposition. You inquired on February 16, 2005 regarding a two (2) page fax sent by her on November 4, 2004. This transmission was in response to an inquiry from an unknown individual who suggested to her that he was "coming to or possibly moving to the Cherokee area." Her response was simply to copy a portion of a Texas Trails map of San Saba County and to fax that page with her cover sheet. These maps are free to the public and are paid for by the numerous advertisers therein. She made no additional contact with the individual to her knowledge and heard nothing more about it until recently.

As we have previously stated to your caller regarding this confusion, the community of Cherokee is an unincorporated area of San Saba County. The community has been in existence since shortly after the founding of the County in 1856. In the past it has had various mercantile establishments, a newspaper, financial institutions, and the Behrens Normal & Business College. Currently it has numerous mercantile establishments, a grocery store, public schools, several churches, a volunteer fire department/community hall, the commissioner's precinct barn, and a post office. North of Cherokee Creek, is the Cherokee Home for Children, a substitute care residential facility operated by the Churches of Christ. I know of two (2) old subdivision plats of lands in the "Town of Cherokee" on various records in the office of the County Clerk (which do have metes and bounds descriptions). And, the boundaries of the Cherokee Independent School District are defined for taxing purposes, but do include a large portion of central and southern San Saba County.

Having examined the maps furnished by you, I can find no relevance to the dashed line located thereon other than the convenience of the cartographer in indicating the general community. The indication on the DeLorme map that there are "City Boundaries" of Cherokee, Texas is clearly erroneous.

Sincerely,
David M. Williams
County Attorney

=====
From: "County Attorney" <attorney@sansabacounty.org>
To: "J.J. McVeigh" <kd4vs@comcast.net>
Subject: Re: FCC proceeding
Date: Thu, 17 Feb 2005 11:32:17 -0600

Sir:

Follow up questions:

1. Yes, we shall run a check on the fax machine and attempt to determine to whom it was sent. We did notice that the number which Ms. Timmons had written and the line upon which it was written were erased on the recent transmittal.
2. No, the DeLorme map was not a part of this County's fax transmission on November 4, 2004.

David M. Williams
County Attorney

=====
From: "County Attorney" <attorney@sansabacounty.org>
To: "J.J. McVeigh" <kd4vs@comcast.net>
Subject: Re: FCC proceeding
Date: Thu, 17 Feb 2005 11:52:11 -0600

Sir:

The number to which the material was faxed on November 4, 2004, at 2:07 p.m. was a Dallas, Texas number 214-522-7406.

In response to your follow up questions:

Yes, there appear to be dashed lines within the community of Cherokee, Texas preprinted on the Texas Trails map, a portion of which was faxed to the number above at the time stated.

David M. Williams
County Attorney

EXHIBIT C

ASSET PURCHASE AGREEMENT

MUNBILLA BROADCASTING PROPERTIES, LTD., a Texas Limited Partnership (the *Seller*), BLANCO TELEVISION, LTD. (the *Buyer*), a Texas Limited Liability Company, (collectively, the *Parties*), CHARLES E. CRAWFORD (the *Guarantor*), and MUNBILLA BROADCASTING CORPORATION (*MBC*) enter into this Asset Purchase Agreement (this *Agreement*) this Eighteenth day of April, 2001.

WITNESSETH:

WHEREAS, MBC is the licensee of radio station KBLK(FM), Facility ID No. 40764, licensed to serve Burnet, Texas on Channel 223A (the *Station*);

WHEREAS, the Seller is in the process of acquiring the Station from MBC;

WHEREAS, the Seller desires to sell to the Buyer, and the Buyer desires to purchase from the Seller, on the terms and conditions this Agreement sets forth, certain of the assets that the Seller is in the process of acquiring from MBC, such assets to be used or held for use by the Seller in connection with the operation of the Station, after the Seller has acquired the Station's FCC authorizations and Station-related assets with the prior consent of the Federal Communications Commission (the *FCC*);

WHEREAS, the Seller further desires to assign to the Buyer the authorizations issued by the FCC to MBC, which authorizations the Seller is in the process of acquiring, and that allow MBC to legally operate the Station;

WHEREAS, the Guarantor desires to facilitate the sale of the Station to the Buyer by the Seller;

ASSET PURCHASE AGREEMENT
RADIO STATION KBLK(FM)
APRIL 18, 2001
PAGE 39

If to the Seller, to:

MUNBILLA BROADCASTING CORPORATION
7 Grantley Court
Dallas, Texas 75230
Attention: B. Shane Fox
Telephone: 1.972.392.2440
Telecopier: 1.972.392.2460

with a copy, which will not constitute notice, to:

John J. McVeigh, Esq.
12101 Blue Paper Trail
Columbia, Maryland 21044-2787
Telephone: 1.301.596.1655
Telecopier: 1.301.596.1656

If to the Buyer, or to the Guarantor, or to both, to:

BLANCO TELEVISION, LTD.
ATTN: CHARLES E. CRAWFORD
3500 Maple Avenue, Suite 1320
Dallas, Texas 75219
Telephone: 1.214.522.1888
Telecopier: 1.214.522.7406

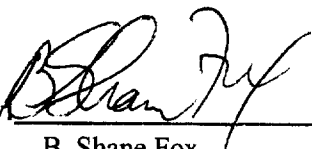

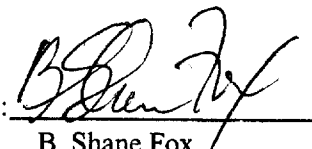
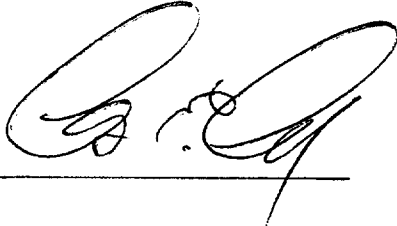
with a copy, which will not constitute notice, to:

Barbara Barron, Esq.
Barron & Newburger
1212 Guadalupe, Suite 104
Austin, Texas 78701
Telephone: 1.512.476.9103
Telecopier: 1.512.476.9253

provided, however, that if any party has designated a different address for itself by fifteen (15) days prior written notice to the others pursuant to this § 9.4, then, for purposes of notices and

ASSET PURCHASE AGREEMENT
RADIO STATION KBLK(FM)
APRIL 18, 2001
PAGE 45

IN WITNESS WHEREOF, the Parties to this Agreement have executed this Agreement as of
the date first above written.

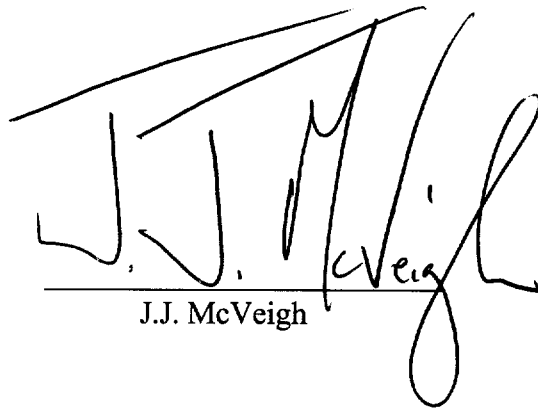
<p><u>THE SELLER:</u></p> <p>MUNBILLA BROADCASTING PROPERTIES, LTD.</p> <p>By:  B. Shane Fox President of its General Partner</p>	<p><u>THE BUYER:</u></p> <p>BLANCO TELEVISION, LTD.</p> <p>By:  Charles E. Crawford Its Managing Member</p>
<p><u>AS TO § 9.19 ONLY:</u></p> <p><u>MBC:</u></p> <p>MUNBILLA BROADCASTING CORPORATION</p> <p>By:  B. Shane Fox Its President</p>	<p><u>THE GUARANTOR:</u></p> <p>CHARLES E. CRAWFORD</p> <p></p>

CERTIFICATE OF SERVICE

I hereby certify that I have, this Seventeenth day of February, 2005, sent a copy of the foregoing **REPLY COMMENTS** by first-class United States mail, postage prepaid, to:

Charles Crawford
4553 Bordeaux Avenue
Dallas, Texas 75205

Gene A. Bechtel, Esq.
Law Office of Gene Bechtel
1050 Seventeenth Street, N.W., Suite 600
Washington, D.C. 20036



J.J. McVeigh